

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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Robert High,

Case No. 2:23-cv-00847-APG-DJA

Plaintiff,

Order

V.

NDOC, et al.,

Defendants.

This is a civil rights violation case by *pro se* plaintiff Robert High, an inmate at High Desert State Prison, against the Nevada Department of Corrections (“NDOC”), Officer Huggins (a correctional officer at High Desert), and others. Plaintiff alleges that Huggins assaulted him and that NDOC staff denied him medical attention and took retaliatory actions against him. (ECF No. 8). Before the Court is Huggins’s motion to extend discovery deadlines (ECF No. 52)¹ and motion to compel Plaintiff to provide supplemental responses to Huggins’s interrogatories (ECF No. 55). Plaintiff has filed a response to the motion to compel (ECF No. 56), in which response he also requests that the Court “grant[] plaintiff permission to meet and confer with his Inmate Legal Assistant...,” as well as appoint him counsel. (ECF No. 56 at 5). Additionally, Plaintiff has filed two improper surreplies—which he titles “motions in support”—addressing Defendant’s reply. (ECF Nos. 61, 62). Huggins moves to strike Plaintiff’s surreplies. (ECF Nos. 65, 66).

Because discovery and litigation of an action involving an incarcerated Plaintiff presents unique difficulties, the Court finds that Huggins has shown good cause and **grants** his motion to extend discovery. (ECF No. 52). Additionally, the Court **grants** Huggins's motion to compel discovery because the interrogatories at issue are relevant and proportional. (ECF No. 55). The Court **denies** Plaintiff's requests for permission to meet with his "inmate legal assistant" and for

¹ Defendant Huggins incorrectly labels this motion as ECF No. 51. (ECF No. 52 at 1).

1 counsel, improperly raised in his response and surreply (ECF No. 56), because he is not entitled
2 to access to any specific inmate assistant and because he has not demonstrated exceptional
3 circumstances to justify appointing counsel. Plaintiff's surreplies appear to be identical and, as
4 noted above, are improper. (ECF Nos. 61, 62). The Court therefore **denies** Plaintiff's "motions
5 in support," **grants** Huggins's motion to strike, and **strikes** the surreplies from the docket, while
6 noting that they contain similar requests for access to Plaintiff's inmate counsel substitute, and for
7 appointment of counsel. (ECF Nos. 61, 62, 65, 66).

8 **I. Huggins's motion for extension of discovery deadline.**

9 Huggins moves the Court to extend the discovery deadline, which is currently June 9,
10 2025. (ECF No. 51). This is the third extension request overall, and the first by this Defendant.
11 (ECF Nos. 39, 43). Huggins filed this motion twenty-one days before the current deadline, and so
12 the Court examines it under the good cause standard. Nevada Local Rule 26-3.² The good cause
13 standard primarily considers the diligence of the party seeking the extension. *Johnson v.*
14 *Mammoth Recreations, Inc.*, 975 F.2d 604, 699 (9th Cir. 1992). The court has broad discretion in
15 controlling discovery. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). A motion to
16 extend scheduled deadlines must include a proposed schedule for completing all remaining
17 discovery. LR 26-3.

18 Here, Huggins indicates that the delay, and subsequent request to extend time, originates
19 from the difficulty in timely communication and coordination with Plaintiff. (ECF No. 52 at 2).
20 Courts in the Ninth Circuit historically treat litigation involving incarcerated, *pro se* litigants with
21 leniency regarding filing and other deadlines.³ Plaintiff has also not responded to the motion to
22 extend discovery, which constitutes consent to the granting of the motion. LR 7-2(d). The Court

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² This refers to the Local Rules of Practice for the United States District Court for the District of
25 Nevada, which can be found online at <https://www.nvd.uscourts.gov/court-information/rules-and-orders/>

26 ³See, e.g., *Faile v. UpJohn Co.*, 988 F.2d 985, 988-89 (9th Cir. 1993) (adjusting the requirements
27 of timely service to account for the differences between incarcerated and non-incarcerated
litigants); *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir. 1987) (expanding opportunities for
28 incarcerated, *pro se* litigants to amend pleadings).

1 therefore finds good cause to extend the deadline as litigation involving incarcerated, *pro se*
 2 litigants is inherently more challenging than litigation involving only non-incarcerated parties.

3 **II. Huggins's motion to compel discovery.**

4 Also before the Court is Huggins's motion to compel discovery. (ECF No. 55). Huggins
 5 lists thirteen interrogatories which he sent to Plaintiff, and which Huggins argues Plaintiff did not
 6 adequately answer. (*Id.*). Defendant Huggins has grouped the interrogatories into four
 7 categories: witness related requests, grievance related requests, medical condition related
 8 requests, and use of force related requests. Huggins has listed each interrogatory's number, its
 9 substance, and the response to each request. (*Id.*).

10 **A. Legal standard.**

11 Under Federal Rule of Civil Procedure 37(a)(1)⁴, a motion to compel “must include a
 12 certification that the movant has in good faith conferred or attempted to confer with the person or
 13 party failing to make disclosure or discovery in an effort to obtain it without court action.” The
 14 Nevada Local Rules also require a meet and confer conference. Those rules provide that the
 15 Court will not consider discovery motions “unless the movant (1) has made a good faith effort to
 16 meet and confer as defined in LR IA 1-3(f) before filing the motion, and (2) includes a
 17 declaration setting forth the details and results of the meet-and-confer conference about each
 18 disputed discovery request.” LR 26-6(c). *Pro se* litigants must follow the same rules of
 19 procedure that govern other litigants, although, as addressed above, courts provide incarcerated
 20 litigants some leniency. *See Sanchez v. Rodriguez*, 298 F.R.D. 460, 470 (C.D. Cal. 2014) (*citing*
 21 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)).

22 Additionally, “[a] court cannot order the production of documents that it has no reason to
 23 believe exist.” *Mizrahi v. Google LLC*, 732 F.Supp.3d 1068, 1070 (N.D. Cal. 2024). If a
 24 responding party’s reasonable search fails to locate any documents responsive to a particular
 25 request, the response to the request should state as much. *Id.* “A requesting party’s mere

27 ⁴ The Federal Rules of Civil Procedure provide the rules governing civil litigation in the United
 28 States Federal Court system. They can be found online at
<https://www.federalrulesofcivilprocedure.org/frcp/>

1 suspicion that additional documents exist is an insufficient basis to grant a motion to compel.” *Id.*
 2 (internal citations and quotations omitted).

3 FRCP 26(b) outlines the scope of discoverable material. “Parties may obtain discovery
 4 regarding any nonprivileged matter that is relevant to any party’s claim or defense and
 5 proportional to the needs of the case....” Fed. R. Civ. P. 26(b)(1). When objecting to a discovery
 6 request, the objecting party “must specifically detail the reasons why each request is irrelevant or
 7 otherwise objectionable, and may not rely on boilerplate, generalized, conclusory, or speculative
 8 arguments.” *Teal Petals St. Trust v. NewRez, LLC*, No. 2:22-cv-00395-JAD-DJA, 2024 WL
 9 4839720, at *4 (D. Nev. Nov. 20, 2024).⁵

10 **B. Discussion.**

11 Here, Huggins’s discovery requests all directly relate to the claims made by Plaintiff in
 12 this case. Huggins is asking for information regarding witnesses to the events in question, the
 13 grievances Plaintiff filed which relate to the claims made against Huggins, Plaintiff’s medical
 14 history as it relates to the claims made in this case, and the force used against Plaintiff during
 15 Huggins’s allegedly excessive use of force. (ECF No. 55). Plaintiff responded to the motion to
 16 compel, detailing the difficulty which he faces in litigating his claims. (ECF No. 56). However,
 17 he does not argue that his previous responses to the interrogatories were adequate, or argue that
 18 the interrogatories themselves are irrelevant, unduly burdensome, or otherwise objectionable.
 19 (*Id.*).

20 The Court is sympathetic to the difficulties which Plaintiff (and all incarcerated litigants)
 21 face in pursuing claims in a court of law. However, the interrogatories at question in this case are
 22 relevant to the claims of the case and Plaintiff has not argued that the interrogatories are unduly
 23 burdensome. While Plaintiff explains that he has some difficulty in accessing medical or legal
 24 documents to help him respond to the requests, he does not argue that he has exhausted all

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 26 ⁵ See also *Williams v. Garrett*, No. 3:22-cv-00264-CLB, 2024 WL 1675445, at *2 (D. Nev. Apr.
 27 18, 2024) (denying motion to compel when a party objected to a discovery request involving
 28 protected information about a third-party inmate); *Westbrook v. GES Exposition Servs., Inc.*, No.
 2:05-cv-00532-KJD (GWF), 2006 WL 8441954, at *3 (D. Nev. May 24, 2006) (denying motion
 to compel production where requests were irrelevant to the claims involved in the case).

1 avenues to obtain or access these documents and does not assert that he is entirely prevented from
 2 doing so. (ECF No. 56). Plaintiff does not argue that any of the interrogatories are irrelevant, or
 3 overly burdensome, only that he is having difficulty responding to them. (*Id.*). While difficulty
 4 responding to discovery may justify Plaintiff asking Huggins for an extension of time or some
 5 other accommodation in responding, it does not justify Plaintiff not responding at all. So, the
 6 Court grants Defendant Huggins's motion to compel and orders Plaintiff to answer, to the best of
 7 his abilities, interrogatory numbers 1, 2, 3, 7, 8, 9, 12, 14, 15, 16, 17, 19, and 20.

8 **III. Plaintiff's requests.**

9 In his response to Defendant's motion to compel discovery (ECF No. 56), Plaintiff
 10 requests that the Court issue "an order granting plaintiff permission to meet and confer with his
 11 Inmate Legal Assistant...." and to appoint him counsel. (ECF No. 56 at 5). The Court instructs
 12 Plaintiff that, according to the Nevada Local Rules, all "motion[s] must be supported by a
 13 memorandum of points and authorities." LR 7-2(a). Plaintiff must provide the legal basis for any
 14 motion or request he brings before this Court. These requests, raised in a responsive filing to
 15 Huggins's motion and absent cited, relevant authorities, are therefore improper. However, the
 16 Court liberally construes this *pro se* filing and will address the requests. The Court denies both
 17 for the reasoning below.

18 **A. Request for access to inmate counsel substitute.**

19 Plaintiff first requests an order allowing him access to his "Inmate Legal Assistant" but
 20 provides no legal basis for this Court to make such an order. (ECF No. 56 at 5). While it is true
 21 that inmates have a constitutionally protected right to seek assistance from inmate counsel
 22 substitutes generally, Plaintiff is "not entitled to assistance from an inmate of his choosing."
 23 *Paulo v. Williams*, No. 2:19-cv-00474-APG-NJK, 2021 WL 3409242, at *1 (D. Nev. Aug. 4,
 24 2021).⁶ Therefore, as Plaintiff is not alleging a violation of his constitutional right to access other

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 27 ⁶ See also *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (incarcerated plaintiff "does
 28 [not] have any right to the services of a particular writ writer.").

1 inmates and resources generally for assistance in furthering his legal claims, the Court denies his
2 request to allow him access to a specific inmate.

3 **B. Request for appointment of counsel.**

4 Plaintiff additionally requests the “appointment of counsel to represent plaintiff in the
5 interest of fairness and due to the exceptional circumstances presented herein.” (ECF No. 56
6 at 5). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983
7 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Under 28 U.S.C.
8 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford
9 counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional
10 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When
11 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of
12 success on the merits as well as the ability of the petitioner to articulate his claims pro se in light
13 of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is
14 dispositive and instead must be viewed together.” *Id.*

15 Here, neither of the factors in *Palmer*, likelihood of success on the merits or the ability of
16 Plaintiff to articulate his claims, weigh in favor of the Court appointing Plaintiff counsel. This
17 Court cannot yet determine the likelihood of success, and Plaintiff continues to demonstrate an
18 ability to both articulate his claims and file his motions. Plaintiff gives detail regarding his
19 difficult situation, specifying that he is in (as of June 3, 2025, the filing date for ECF No. 56)
20 twenty-four-hour lockdown. (ECF No. 56 at 4). He does not, however, explain to the Court how
21 this impacts his ability to litigate his claims. Additionally, being in administrative segregation is
22 itself not an exceptional circumstance. *See Sullivan v. Warden of S. Desert Corr. Facility*,
23 No. 2:23-cv-01203-JAD-NJK, 2025 WL 1645234, at *2 (D. Nev. June 10, 2025). Plaintiff was
24 able to file ECF No. 56 and appears to maintain his access to the resources in the prison law
25 library as well as to other inmates and legal resources generally. As Plaintiff neither establishes
26 that there is some likelihood that he will succeed on his claims, nor that he is unable to litigate or
27 articulate his claims beyond the current stage of litigation, the Court does not find exceptional
28 circumstances. The Court denies Plaintiff’s request without prejudice.

1 **IV. Plaintiff's surreplies in support of his requests.**

2 Plaintiff additionally filed briefs in support of his response to Defendant's motion to
3 compel. (ECF Nos. 61, 62). The filings appear to be identical. The Court finds these briefs to be
4 surreplies, which Plaintiff has improperly raised, as parties must request leave of the court to file
5 surreplies, and the Local Rules discourage motions for leave to file surreplies. *See* LR 7-2(b).
6 The Court did review the filings, however, and notes that Plaintiff addresses some of the
7 circumstances surrounding his current confinement status, and again seeks appointment of
8 counsel and to be allowed access to his inmate counsel substitute. (ECF Nos. 61, 62). But
9 Plaintiff's surreplies, even if the Court were to consider them, do not present information which
10 changes the Court's decision regarding Huggins's motion to compel. (*Id.* at 6). They also do not
11 present information or caselaw that would change the Court's decision on Plaintiff's requests for
12 access to his inmate counsel substitute or for appointment of counsel. For the reasons stated
13 above, Plaintiff does not have the legal right to access a specific inmate counsel substitute, nor is
14 Plaintiff entitled to appointed counsel at this time.

15 **V. Defendant's motions to strike Plaintiff's surreplies.**

16 Defendant Huggins filed two identical motions to strike Plaintiff's improper surreplies.
17 (ECF Nos. 65, 66). As stated above, Plaintiff's surreplies are both improper and would not
18 change the Court's analysis on the underlying requests and motions. The Court has "inherent
19 authority to manage its dockets and courtrooms..." *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). The
20 Court grants Defendant Huggins's motions to strike.

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1 **IT IS THEREFORE ORDERED** that Huggins's motion to extend discovery (ECF
 2 No. 52) is **granted**. Because certain of Huggins's proposed deadlines have passed, the Court *sua*
 3 *sponte* extends the discovery deadline, and all deadlines following it, by ninety days from their
 4 previous dates, as outlined below:

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6 Discovery cutoff:	September 8, 2025
7 Discovery motions:	September 22, 2025
8 Motions for summary judgment:	October 8, 2025
9 Joint pretrial order:	November 10, 2025 ⁷

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11 **IT IS FURTHER ORDERED** that Defendant's motion to compel discovery responses
 12 (ECF No. 55) is **granted**.

13 **IT IS FURTHER ORDERED** that Plaintiff's request for access to his inmate counsel
 14 substitute and request for the Court to appoint counsel, raised improperly in his response to
 15 Defendant's motion to compel, (ECF No. 56) are **denied**.

16 **IT IS FURTHER ORDERED** that Plaintiff's motions in support of his response (ECF
 17 Nos. 61, 62), raised as improper surreplies, are **denied**.

18 **IT IS FURTHER ORDERED** that Defendant's motions to strike Plaintiff's improper
 19 surreplies (ECF Nos. 65, 66) are **granted**. The Clerk of Court is kindly directed to **strike** ECF
 20 Nos. 61 and 62 from the docket.

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22 DATED: July 11, 2025

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DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE

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⁷ Under Local Rule 26-1(b)(5), if the dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended until thirty days after decision on the dispositive motions or further court order.